IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 25TH MARCH 2011 / 4TH CHAITHRA 1933

Crl.Rev.Pet.No. 201 of 1999()

C.C.301 OF 1993 OF JFCM KUNNAMANGALAM.
CRA 32/96 OF THE COURT OF SESSION, KOZHIKODE DIVISION.

REVN. PETITIONER(S):

K.P.DEVAN, S/O.RARICHAN, KURUVATTUR AMSOM, IDUKKAPPARA.

BY ADV. SRI.P.M.MOHAMMED ALI

RESPONDENT(S):

STATE OF KERALA, REP. BY THE SUB INSPECTOR OF POLICE, CHEVAYOOR, KOZHIKODE, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

PUBLIC PROSECUTOR SRI.C.K.SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25/03/2011, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

Crl.R.P. No.201 of 1999

Dated 25th March, 2011.

O R D E R

Revision petitioner was convicted and sentenced by the Magistrate Court to undergo rigorous imprisonment for one year and to pay a fine of Rs.2000/- and in default to undergo simple imprisonment for two months under Section 457 of Indian Penal Code. He was also sentenced to undergo rigorous imprisonment for one year for offence under Section 511 of 380 IPC. The sentences were to run consecutively. In appeal, the conviction and sentence were confirmed.

2. According to prosecution, on 21.7.1991 at about 1.20 hours in the night, accused 1 and 2, in furtherance of common intention to commit theft of copra, committed house breaking in the oil mill of PW1, by removing the tiles of the roof and attempted to commit theft of dried coconuts. Second accused ran away and first accused was caught red-handed by PW2 and PW3, who were instructed to remain in the mill during night, since there was theft on earlier occasions. PW1 was also present in the premises and he found revision petitioner being

caught by PW2 and PW3. On hearing the commotion, somebody telephoned the control room and the Sub Inspector came to the scene and took the accused to the police station. The FIR was registered suo motu by the Sub Inspector.

3. The prosecution examined PW1 to PW8 and marked Exts.P1 to P4. Accused did not adduce any evidence. On analysis of the evidence, both the courts below concurred in the findings that the prosecution proved its case beyond reasonable doubt and those are challenged.

4. Heard. Perused records. PW1, the owner of the mill deposed that he arranged PW2 and PW3 and one Janardhanan (CW4) to remain in the premises of the mill during theft since there was theft of dried coconuts from the mill on earlier occasions. He also hid himself in the latrine of the mill. During night of the crucial day, PW1 heard some sound inside the mill and on rushing to the spot, found PW2, PW3 and CW4 having caught hold of revision petitioner and other person from running away from the place. By the time, residents of the

locality gathered and informed the police. The police came there and took the accused to the police station.

5. PW2 and PW3 also gave evidence supporting the prosecution case and deposed about the manner they could catch hold of revision petitioner. All of them stated that the tiles of the roof were removed by accused. PW4 is a neighbour who reached the place of occurrence immediately on hearing the sound and he went to the house of one Karunakaran Nair and informed the police. PW5, the A.S.I. of police, who was on patrol duty, deposed that he received communication from control room that the accused was caught red handed and kept in the place of occurrence. He came to the spot and took the accused to custody and produced him before the officer with a report Ext.P1 based on which the FIR was registered. Scene mahazar was also prepared and it is Ext.P2.

6. The courts below analysed the evidence of the witnesses in detail and found that their evidence is believable. On going through the evidence and the discussion made in the

judgment, I find no reason to interfere with the same. There is no illegality or impropriety committed by the courts below in entering a conviction against the accused. Learned counsel appearing for revision petitioner argued that no complaint was filed by PW1 and hence, the whole case is unbelievable. The mere failure on the part of PW1 to lodge a complaint, on the facts of the case, cannot be said to be a ground to acquit accused. Law can be set in motion by any person. The A.S.I. of Police came to the spot and reported the matter and laid a report and it was based on the said report that a crime was registered. Since a crime was also registered within one hour of the incident, it cannot be said that failure on the part of PW1 to give a statement is fatal to the prosecution. There is absolutely no reason to interfere with the conviction.

7. Learned counsel appearing for revision petitioner submitted that leniency may be shown in the case of sentence. It was pointed out that sentence was ordered to run consecutively. Revision petitioner is not involved in any other

offence and hence the sentence be at least ordered to be run concurrently, it is submitted. On going through the records and on hearing both sides and on considering the circumstances of petitioner, I am satisfied that the sentence can be modified. Hence, while confirming the conviction, it is ordered that the sentence shall run concurrently.

This revision petition is partly allowed.

K.HEMA, JUDGE.

Krs